

**PATENT COOPERATION TREATY**

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:

**PCT**  
**TRANSLATION**

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

(PCT Rule 43bis.1)

Date of mailing (day/month/year)	<b>See form PCT/ISA/210</b>
-------------------------------------	-----------------------------

Applicant's or agent's file reference <b>H 05516 WO</b>		<b>FOR FURTHER ACTION</b> See paragraph 2 below	
International application No. <b>PCT/EP2005/012421</b>	International filing date (day/month/year) <b>21.11.2005</b>	Priority date (day/month/year) <b>17.12.2004</b>	
International Patent Classification (IPC) or both national classification and IPC <b>A61Q5/04, A61Q5/10, A61K8/06, A61K8/67</b>			
Applicant <b>HENKEL KOMMANDITGESELLSCHAFT AUF AKTIEN</b>			

1. This opinion contains indications relating to the following items:

- |   |
|---|
| <input checked="" type="checkbox"/> Box No. I      Basis of the opinion<br><input type="checkbox"/> Box No. II      Priority<br><input type="checkbox"/> Box No. III      Non-establishment of opinion with regard to novelty, inventive step and industrial applicability<br><input type="checkbox"/> Box No. IV      Lack of unity of invention<br><input checked="" type="checkbox"/> Box No. V      Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement<br><input type="checkbox"/> Box No. VI      Certain documents cited<br><input type="checkbox"/> Box No. VII      Certain defects in the international application<br><input checked="" type="checkbox"/> Box No. VIII      Certain observations on the international application |
|---|

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP	Authorized officer
Facsimile No.	Telephone No.

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
**PCT/EP2005/012421**

**Box No. I Basis of this opinion**

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
  - This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material
    - a sequence listing
    - table(s) related to the sequence listing
  - b. format of material
    - in written format
    - in computer readable form
  - c. time of filing/furnishing
    - contained in the international application as filed.
    - filed together with the international application in computer readable form.
    - furnished subsequently to this Authority for the purposes of search.
3.  In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
**PCT/EP2005/012421**

Box No. V	<u>Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</u>	
<b>1. Statement</b>		
Novelty (N)	Claims	_____ YES
	Claims	<u>1-10</u> NO
Inventive step (IS)	Claims	_____ YES
	Claims	<u>1-10</u> NO
Industrial applicability (IA)	Claims	_____ YES
	Claims	<u>1-10</u> NO
<b>2. Citations and explanations:</b>		
<p>1. <b>Novelty</b> (PCT Article 33(2))</p> <p>The present application fails to meet the requirements of PCT Article 33(2), since the subject matter of claims 1-10 is not novel over the prior art pursuant to PCT Rule 64(1)-(3).</p> <p>The following documents already disclose cosmetic kits which fall within the scope of protection of present claims 1-10. The usage instructions described in claims 2 and 3 are considered merely to reproduce information that does not make any technical contribution to define the kit but instead merely describes a possible method suitable for the use of the kit. Therefore, as for the present claim 1 itself, the subject matter of present claims 2 and 3 lacks the required novelty, for the same reasons.</p> <p>a) <b>DE-A-198 16 662</b> (D1) describes, in examples 1 and 2, cosmetic preparations which are prepared from two compositions, and which therefore must necessarily be present in two different containers.</p> <p>The first composition is a PIT emulsion (page 5 lines 3-5). The second component is an aqueous liquid composition which comprises further care substances (such as urea, for example). Hence, prior to the mixing of the two compositions, a kit is present as defined in the present claim 1.</p> <p>Moreover, the completed keratin reducing agent can be regarded as a first part of a kit. The associated oxidative fixative (page 5 lines 25-28) in this case forms the second component, which represents an aqueous emulsion comprising care</p>		

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

<p align="right">International application No. <b>PCT/EP2005/012421</b></p>
---

<b>Box No. V</b>	<b>Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</b>
<p>substances such as coconut fatty acid ethanolamide, for example.</p> <p>Consequently the compositions described in D1 fall within the scope of protection of present claims 1-3, 7-8 (PCT Article 33(2)).</p> <p>D1 additionally describes how through the use of a PIT emulsion it is possible to increase the activity of the products (page 3 lines 19-23) in such a way that the pH can be selected to be around the neutral point. This leads, implicitly, to the protection of the scalp, which is attacked by aqueous emulsions having an otherwise necessarily higher pH.</p> <p>Consequently the subject matter of present claims 9 and 10 also lacks the required novelty (PCT Article 33(2)).</p> <p>b) <b>DE-A-198 37 191</b> (D2) describes vitamin-containing PIT compositions (page 3 lines 45-49, table I) which are incorporated into a cream containing panthenol (table II). Since both compositions must be present separately from one another in a container before they are combined, the products described in examples 1-3 fall within the scope of protection of present claims 1-6 (PCT Article 33(2)).</p> <p>c) <b>US-B-6 303 109</b> (D3) describes a body cleansing product which is produced from two agents (kit), the first agent being a vitamin-containing PIT emulsion having an oil fraction of 30% by weight (example M1, M2). This PIT emulsion is combined with a second body cleansing product (example 1), which comprises panthenol (example D1).</p> <p>Consequently the subject matter of present claims 1-6 also lacks the required novelty (PCT Article 33(2)).</p> <p>d) <b>US-A-2003/0219399</b> (D4) describes hair care products and their use in hair colouring processes (claim 16). Employed are two separately packaged compositions, as is commonplace within the field of hair colorants (claims 13, 14, examples). The hair care products, the colorants and the oxidizing agents may all be prepared in the form of a PIT emulsion (paragraphs</p>	

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/EP2005/012421

Box No. V      Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

[0231], [0254], [0264]). Oxidizing agents comprise care agents such as cetyl alcohol and stearyl alcohol, for example (paragraph [0260]). Hence D4 as well shows a kit which falls within the scope of protection of present claims 1-4.

2. **Inventive step** (PCT Article 33(3))

2.1. Document D1 describes hair treatment products which contain a PIT emulsion as one component.

Starting from D1 as the closest prior art, the subject matter of claims 4-6 differs in that the amount of oily substance is lower (claim 4), the PIT emulsion contains additional auxiliaries such as vitamins, for example (claim 5), or the further composition contains defined care substances (claim 5).

The present application contains no examples or indications whatsoever that, using these defined quantities or ingredients, particular effects are obtained or problems solved in a surprising way.

Therefore the objective technical problem can only be seen as that of providing an alternative.

Arbitrarily reducing the amount of oily substance in the PIT emulsion in order to solve this problem is part of routine operation for a person skilled in the art.

The addition of vitamins, provitamins, etc., is already proposed in D1 for the purpose of increasing the skin compatibility of the products described therein (page 3 lines 59-61).

It appears to be completely immaterial whether care substances of this kind are present in the PIT emulsion or in the following composition.

Consequently the arbitrary division of the care substances listed in D1 (vitamins, panthenol) between the two components, in accordance with present claims 5 (vitamins in PIT emulsion) and 6 (panthenol in composition B), does not appear to achieve any particular effect and hence does not appear to make any contribution to an inventive step. Consequently the subject matter of present claims 4-6 lacks an inventive step starting from D1 as the closest prior art.

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/EP2005/012421

Box No. V      Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

- 2.2. A similar line of argument also applies in respect of D4 as possible closest prior art for claims 5-10.
- 2.3. **WO-A-02/074272** (D5) addresses hair treatment products, like the present application as well. D5 can therefore be considered to be closest prior art for said present application.
- D5 describes kits which have containers that are separated from one another (claim 15, examples). These compositions comprise the customary active care substances (page 24 lines 14-30, examples).
- D5 confirms, moreover, that it is common practice to formulate the compositions of such kits as, for example, a PIT emulsion (page 36 lines 15-20).
- The present application does not contain any examples or indications to the effect that the choice of a particular preparation process for preparing a microemulsion (PIT emulsion) or the use of particular ingredients in particular process steps achieves a particular effect or solves problems in a surprising way.
- Consequently the underlying problem can only been seen as that of being to provide an alternative.
- In this context, D5 discloses to a person skilled in the art the teaching whereby the example formulations on pages 33-35 are to be configured, preferably, in the form of a kit, it being possible to provide the contents of the individual containers as a PIT emulsion (page 36 lines 15-20).
- Consequently an embodiment of this kind is an obvious alternative to a person skilled in the art, contrary to the requirements of PCT Article 33(3).
- 2.4. The present application fails to indicate how the hair or the scalp is to be protected in a surprising way by a PIT emulsion or by a defined care substance.
- The advantageous properties of PIT emulsions are general knowledge for a person skilled in the art, as shown for

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/EP2005/012421

Box No. V	<p>Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>example by D1.</p> <p>Furthermore, a person skilled in the art is aware that through the use of microemulsions of the PIT type it is possible to achieve distinct improvements in the care properties and hence in the protection of the skin and hair.</p> <p>This is clear, for example, from <b>DE-A-43 18 171</b> (D6, page 2 lines 35-39). D6 discloses how the addition of such PIT emulsions to aqueous preparations produces an extremely considerable improvement in the effect of preparations on keratinic surfaces: in particular, a reduction in removal of fat from the skin (therefore contributing to the protection of the skin), an improvement in the wet combability of the hair, acceleration of the drying of the hair, and an improved hold on the part of the dry, styled hair.</p> <p>The advantages achievable through the use of PIT emulsions (microemulsions) are therefore well known to a person skilled in the art.</p> <p>The use of arbitrarily selected, known and customary care substances (such as vitamins and panthenol, for example) for the purpose of protecting the skin and the hair is likewise familiar to a person skilled in the art.</p> <p>In the absence of demonstrated surprising effects or unexpected advantages, it is not possible to discern, in the present application, any subject matter that might form a basis for a new and, above all, inventive claim.</p> <p>3. The dependent claims do not appear to contain any additional features which, in combination with claims to which they refer, might make a decisive contribution to novelty (see section 1) or inventive step (see section 2). The features recited are either known from the prior art or are of the kind that a person skilled in the art routinely practices on the basis of familiar considerations, especially since the resulting advantages are readily foreseeable and since the present application does not demonstrate any surprising advantages or unexpected effects attributable to these features.</p>
-----------	--

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/EP2005/012421

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

With regard to the clarity of the claims and the description, or to the question of whether the claims are fully supported by the description, the following comments apply:

1. The provision of use instructions in claims 2 and 3 is regarded as the reproduction of the information and not as a technical feature.  
The subject matter of claims 2 and 3 is therefore unclear (PCT Article 6) and superfluous.
2. The terms "care substances" and "vitamin precursors" lack any clear and unambiguous meaning. Consequently the subject matter of claims 1, 5, 7-9 lacks the required clarity (PCT Article 6).
3. In the course of any revision, the applicant should take account of PCT Article 34(2) (b) (unallowed amendments which go beyond the disclosure content of the international application at the time of filing).

Information which, although relating to the subject matter of the invention (for example, further details concerning the advantages of the invention or the problem to be solved), have no basis in the original documents can only be mentioned in the letter of response, but not adopted into the application (PCT Article 34(2) (b)).

The applicant should **clearly indicate the amendments** that have been made. Furthermore, for amendments which represent deletion, replacement or addition of the features, a very precise **indication should be given of the passages** in the original documents that **form a basis** for the amendments made (PCT Rule 66.8(a), Guidelines, paragraph 20.06-20.08).

Where appropriate, this information may be given in handwritten form on copies of the relevant parts of the

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2005/012421

**Box No. VIII      Certain observations on the international application**

original application (PCT Rule 66.8(b)). Preferably, in addition, a further, good copy of the pages in question should be submitted as well.

**PATENT COOPERATION TREATY**

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:

**PCT**

*TRANSLATION*

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

(PCT Rule 43bis.1)

Date of mailing (day/month/year)	<b>See form PCT/ISA/210</b>
-------------------------------------	-----------------------------

**FOR FURTHER ACTION**

See paragraph 2 below

Applicant's or agent's file reference <b>H 05516 WO</b>			
International application No. <b>PCT/EP2005/012421</b>	International filing date (day/month/year) <b>21.11.2005</b>	Priority date (day/month/year) <b>17.12.2004</b>	
International Patent Classification (IPC) or both national classification and IPC <b>A61Q5/04, A61Q5/10, A61K8/06, A61K8/67</b>			
Applicant <b>HENKEL KOMMANDITGESELLSCHAFT AUF AKTIEN</b>			

**1. This opinion contains indications relating to the following items:**

- |                                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | Box No. I      Basis of the opinion  |
| <input type="checkbox"/>            | Box No. II     Priority  |
| <input type="checkbox"/>            | Box No. III    Non-establishment of opinion with regard to novelty, inventive step and industrial applicability  |
| <input type="checkbox"/>            | Box No. IV    Lack of unity of invention   |
| <input checked="" type="checkbox"/> | Box No. V     Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/>            | Box No. VI    Certain documents cited  |
| <input type="checkbox"/>            | Box No. VII   Certain defects in the international application   |
| <input checked="" type="checkbox"/> | Box No. VIII   Certain observations on the international application   |

**2. FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

**3. For further details, see notes to Form PCT/ISA/220.**

Name and mailing address of the ISA/EP	Authorized officer
Facsimile No.	Telephone No.

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/EP2005/012421

Box No. I	Basis of this opinion
	<p>1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.</p> <p><input type="checkbox"/> This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).</p> <p>2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:</p> <p>a. type of material</p> <p><input type="checkbox"/> a sequence listing</p> <p><input type="checkbox"/> table(s) related to the sequence listing</p> <p>b. format of material</p> <p><input type="checkbox"/> in written format</p> <p><input type="checkbox"/> in computer readable form</p> <p>c. time of filing/furnishing</p> <p><input type="checkbox"/> contained in the international application as filed.</p> <p><input type="checkbox"/> filed together with the international application in computer readable form.</p> <p><input type="checkbox"/> furnished subsequently to this Authority for the purposes of search.</p> <p>3. <input type="checkbox"/> In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.</p> <p>4. Additional comments:</p>

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
**PCT/EP2005/012421**

<b>Box No. V</b>		<b>Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</b>	
<b>1. Statement</b>			
Novelty (N)		Claims _____	YES
		Claims <u>1-10</u>	NO
Inventive step (IS)		Claims _____	YES
		Claims <u>1-10</u>	NO
Industrial applicability (IA)		Claims <u>1-10</u>	YES
		Claims _____	NO
<b>2. Citations and explanations:</b>			
<p><b>1. Novelty (PCT Article 33(2))</b></p> <p>The present application fails to meet the requirements of PCT Article 33(2), since the subject matter of claims 1-10 is not novel over the prior art pursuant to PCT Rule 64(1)-(3).</p> <p>The following documents already disclose cosmetic kits which fall within the scope of protection of present claims 1-10. The usage instructions described in claims 2 and 3 are considered merely to reproduce information that does not make any technical contribution to define the kit but instead merely describes a possible method suitable for the use of the kit. Therefore, as for the present claim 1 itself, the subject matter of present claims 2 and 3 lacks the required novelty, for the same reasons.</p> <p>a) <b>DE-A-198 16 662</b> (D1) describes, in examples 1 and 2, cosmetic preparations which are prepared from two compositions, and which therefore must necessarily be present in two different containers.</p> <p>The first composition is a PIT emulsion (page 5 lines 3-5). The second component is an aqueous liquid composition which comprises further care substances (such as urea, for example). Hence, prior to the mixing of the two compositions, a kit is present as defined in the present claim 1.</p> <p>Moreover, the completed keratin reducing agent can be regarded as a first part of a kit. The associated oxidative fixative (page 5 lines 25-28) in this case forms the second component, which represents an aqueous emulsion comprising care</p>			

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2005/012421

Box No. V	<b>Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</b>
-----------	---

substances such as coconut fatty acid ethanolamide, for example.

Consequently the compositions described in D1 fall within the scope of protection of present claims 1-3, 7-8 (PCT Article 33(2)).

D1 additionally describes how through the use of a PIT emulsion it is possible to increase the activity of the products (page 3 lines 19-23) in such a way that the pH can be selected to be around the neutral point. This leads, implicitly, to the protection of the scalp, which is attacked by aqueous emulsions having an otherwise necessarily higher pH.

Consequently the subject matter of present claims 9 and 10 also lacks the required novelty (PCT Article 33(2)).

- b) **DE-A-198 37 191** (D2) describes vitamin-containing PIT compositions (page 3 lines 45-49, table I) which are incorporated into a cream containing panthenol (table II). Since both compositions must be present separately from one another in a container before they are combined, the products described in examples 1-3 fall within the scope of protection of present claims 1-6 (PCT Article 33(2)).
- c) **US-B-6 303 109** (D3) describes a body cleansing product which is produced from two agents (kit), the first agent being a vitamin-containing PIT emulsion having an oil fraction of 30% by weight (example M1, M2). This PIT emulsion is combined with a second body cleansing product (example 1), which comprises panthenol (example D1). Consequently the subject matter of present claims 1-6 also lacks the required novelty (PCT Article 33(2)).
- d) **US-A-2003/0219399** (D4) describes hair care products and their use in hair colouring processes (claim 16). Employed are two separately packaged compositions, as is commonplace within the field of hair colorants (claims 13, 14, examples). The hair care products, the colorants and the oxidizing agents may all be prepared in the form of a PIT emulsion (paragraphs

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/EP2005/012421

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

[0231], [0254], [0264]). Oxidizing agents comprise care agents such as cetyl alcohol and stearyl alcohol, for example (paragraph [0260]). Hence D4 as well shows a kit which falls within the scope of protection of present claims 1-4.

2. **Inventive step** (PCT Article 33(3))

2.1. Document D1 describes hair treatment products which contain a PIT emulsion as one component.

Starting from D1 as the closest prior art, the subject matter of claims 4-6 differs in that the amount of oily substance is lower (claim 4), the PIT emulsion contains additional auxiliaries such as vitamins, for example (claim 5), or the further composition contains defined care substances (claim 5).

The present application contains no examples or indications whatsoever that, using these defined quantities or ingredients, particular effects are obtained or problems solved in a surprising way.

Therefore the objective technical problem can only be seen as that of providing an alternative.

Arbitrarily reducing the amount of oily substance in the PIT emulsion in order to solve this problem is part of routine operation for a person skilled in the art.

The addition of vitamins, provitamins, etc., is already proposed in D1 for the purpose of increasing the skin compatibility of the products described therein (page 3 lines 59-61).

It appears to be completely immaterial whether care substances of this kind are present in the PIT emulsion or in the following composition.

Consequently the arbitrary division of the care substances listed in D1 (vitamins, panthenol) between the two components, in accordance with present claims 5 (vitamins in PIT emulsion) and 6 (panthenol in composition B), does not appear to achieve any particular effect and hence does not appear to make any contribution to an inventive step. Consequently the subject matter of present claims 4-6 lacks an inventive step starting from D1 as the closest prior art.

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/EP2005/012421

Box No. V      **Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

- 2.2. A similar line of argument also applies in respect of D4 as possible closest prior art for claims 5-10.
- 2.3. **WO-A-02/074272** (D5) addresses hair treatment products, like the present application as well. D5 can therefore be considered to be closest prior art for said present application.
- D5 describes kits which have containers that are separated from one another (claim 15, examples). These compositions comprise the customary active care substances (page 24 lines 14-30, examples).
- D5 confirms, moreover, that it is common practice to formulate the compositions of such kits as, for example, a PIT emulsion (page 36 lines 15-20).
- The present application does not contain any examples or indications to the effect that the choice of a particular preparation process for preparing a microemulsion (PIT emulsion) or the use of particular ingredients in particular process steps achieves a particular effect or solves problems in a surprising way.
- Consequently the underlying problem can only been seen as that of being to provide an alternative.
- In this context, D5 discloses to a person skilled in the art the teaching whereby the example formulations on pages 33-35 are to be configured, preferably, in the form of a kit, it being possible to provide the contents of the individual containers as a PIT emulsion (page 36 lines 15-20).
- Consequently an embodiment of this kind is an obvious alternative to a person skilled in the art, contrary to the requirements of PCT Article 33(3).
- 2.4. The present application fails to indicate how the hair or the scalp is to be protected in a surprising way by a PIT emulsion or by a defined care substance.
- The advantageous properties of PIT emulsions are general knowledge for a person skilled in the art, as shown for

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/EP2005/012421

Box No. V      Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

example by D1.

Furthermore, a person skilled in the art is aware that through the use of microemulsions of the PIT type it is possible to achieve distinct improvements in the care properties and hence in the protection of the skin and hair.

This is clear, for example, from **DE-A-43 18 171** (D6, page 2 lines 35-39). D6 discloses how the addition of such PIT emulsions to aqueous preparations produces an extremely considerable improvement in the effect of preparations on keratinic surfaces: in particular, a reduction in removal of fat from the skin (therefore contributing to the protection of the skin), an improvement in the wet combability of the hair, acceleration of the drying of the hair, and an improved hold on the part of the dry, styled hair.

The advantages achievable through the use of PIT emulsions (microemulsions) are therefore well known to a person skilled in the art.

The use of arbitrarily selected, known and customary care substances (such as vitamins and panthenol, for example) for the purpose of protecting the skin and the hair is likewise familiar to a person skilled in the art.

In the absence of demonstrated surprising effects or unexpected advantages, it is not possible to discern, in the present application, any subject matter that might form a basis for a new and, above all, inventive claim.

3. The dependent claims do not appear to contain any additional features which, in combination with claims to which they refer, might make a decisive contribution to novelty (see section 1) or inventive step (see section 2). The features recited are either known from the prior art or are of the kind that a person skilled in the art routinely practices on the basis of familiar considerations, especially since the resulting advantages are readily foreseeable and since the present application does not demonstrate any surprising advantages or unexpected effects attributable to these features.

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/EP2005/012421

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

With regard to the clarity of the claims and the description, or to the question of whether the claims are fully supported by the description, the following comments apply:

1. The provision of use instructions in claims 2 and 3 is regarded as the reproduction of the information and not as a technical feature.  
The subject matter of claims 2 and 3 is therefore unclear (PCT Article 6) and superfluous.
2. The terms "care substances" and "vitamin precursors" lack any clear and unambiguous meaning. Consequently the subject matter of claims 1, 5, 7-9 lacks the required clarity (PCT Article 6).
3. In the course of any revision, the applicant should take account of PCT Article 34(2)(b) (unallowed amendments which go beyond the disclosure content of the international application at the time of filing).

Information which, although relating to the subject matter of the invention (for example, further details concerning the advantages of the invention or the problem to be solved), have no basis in the original documents can only be mentioned in the letter of response, but not adopted into the application (PCT Article 34(2)(b)).

The applicant should **clearly indicate the amendments** that have been made. Furthermore, for amendments which represent deletion, replacement or addition of the features, a very precise **indication should be given of the passages** in the original documents that **form a basis** for the amendments made (PCT Rule 66.8(a), Guidelines, paragraph 20.06-20.08).

Where appropriate, this information may be given in handwritten form on copies of the relevant parts of the

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
**PCT/EP2005/012421**

**Box No. VIII      Certain observations on the international application**

original application (PCT Rule 66.8(b)). Preferably, in addition, a further, good copy of the pages in question should be submitted as well.